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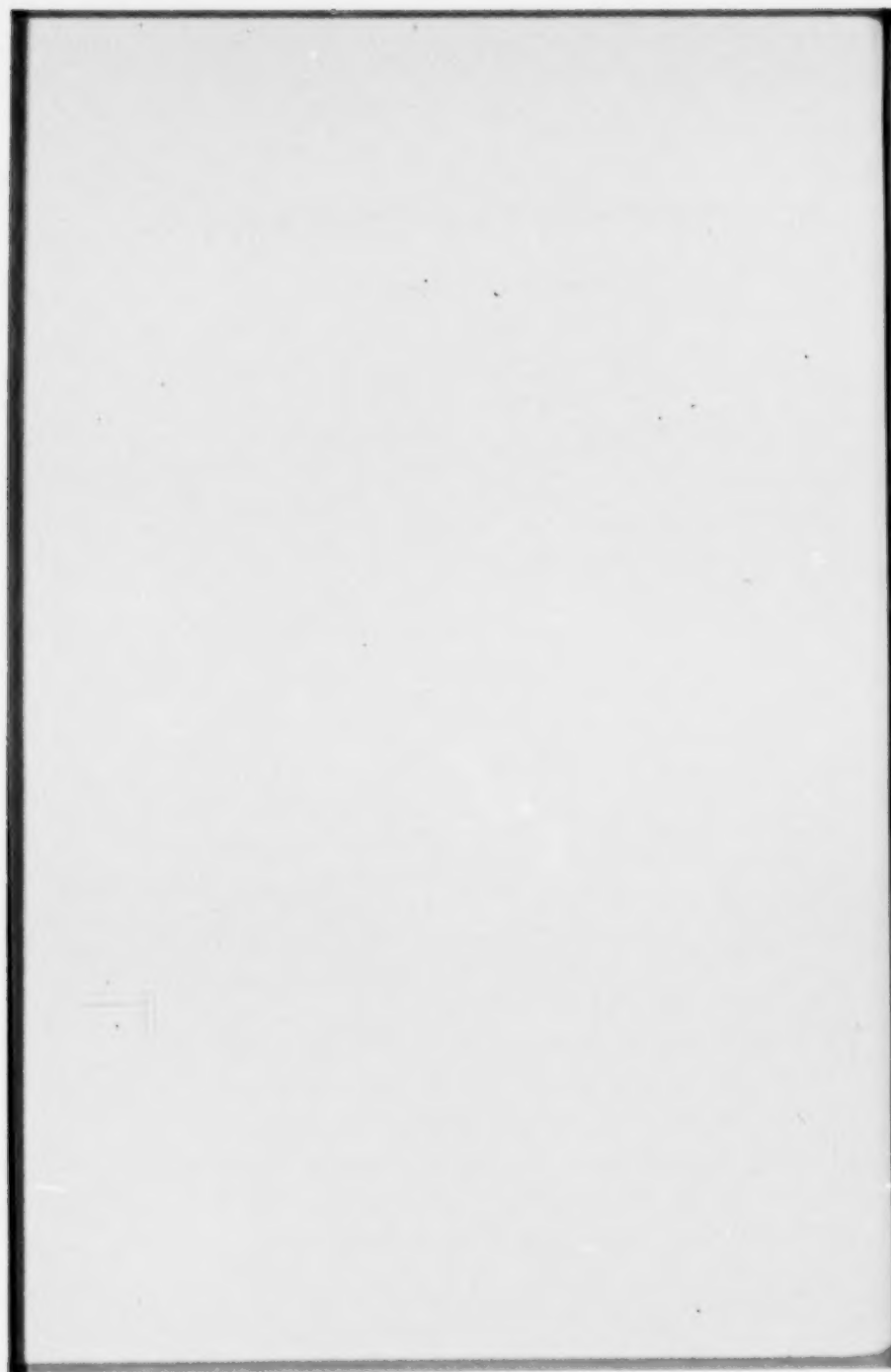
CITATIONS

Cases:

<i>Kay v. United States</i> , 303 U. S. 1	4
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Statutes and Regulations:

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 135

WILHELM SCHEFOLD, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 11) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 14, 1945 (R. 12). The petition for a writ of certiorari was filed June 18, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether the fact that an application for a certificate of identification by an enemy alien is required by virtue of a presidential proclamation and regulations of the Attorney General rather than under a specific act of Congress, exonerates petitioner from liability to prosecution under Section 35 (A) of the Criminal Code for making a false statement in such an application.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations are printed at pages 2-5 of the Government's brief in opposition in the companion case of *Koeniger v. United States*, No. 136, this Term, to which we respectfully refer the Court.

STATEMENT

An indictment in one count was returned against petitioner in the United States District Court for the Eastern District of New York, charging that, in violation of Section 35 (A) of the Criminal Code, he had made a false statement of a material fact in a matter within the jurisdiction of the United States Department of Justice in that, in an application for a certificate of identification required of enemy aliens, he had stated that he belonged to no clubs, organizations or societies other than the "German Veteran" during the five-year period preceding the date of the application, whereas in fact he had been a member of and affiliated with the Nazi Party

and the National Socialist War Victims Relief Association during that period (R. 4-5). Petitioner's demurrer and motion to quash the indictment were overruled (R. 3, 5-7). He thereafter entered a plea of guilty and was sentenced to imprisonment for six months (R. 3, 7-8). On appeal to the Circuit Court of Appeals for the Second Circuit, predicated solely on the contention that the indictment failed to state an offense against the United States (R. 9-10), the judgment was affirmed (R. 12).

ARGUMENT

Petitioner contends that this case falls within the doctrine of *United States v. Eaton*, 144 U. S. 677, holding that a violation of a regulation is not a crime unless Congress has specifically declared that noncompliance with the regulation shall constitute a crime. However, as the court below pointed out in its decision in the companion case of *United States v. Barra*, decided April 27, 1945, the pertinent portion of which is reprinted at pp. 20-21 of the petition for a writ of certiorari, petitioner was not here charged with a violation of a regulation, but with making a false statement in a matter within the jurisdiction of an agency of the United States.¹ Petitioner

¹ By the same token, there is no merit in petitioner's argument (Pet. 7-11) that R. S. 4069 provides exclusive sanctions for violations of regulations issued pursuant to R. S. 4067. See also our Brief in Opposition in *Koenig v. United States*, No. 136, this Term.

might have refused to comply with the regulations of the President and the Attorney General and thus have subjected himself to the sanctions specified for non-compliance in R. S. 4069. But, having chosen to give the appearance of compliance, he was under a duty to comply honestly; and when he did not do so, he was subject to the punishment specifically provided by Congress for the act of making false statements to an agency of the United States in a matter within its jurisdiction. Petitioner does not dispute (Pet. 10-11) that the application for a certificate of identification was a matter within the jurisdiction of an agency of the United States. And even if the regulations were vulnerable to direct attack in a proper proceeding, such invalidity would not constitute a defense to a prosecution for making a false statement in respect of a matter covered by the regulations. *Kay v. United States*, 303 U. S. 1, 6-7; *United States v. Kapp*, 302 U. S. 214, 218.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1945.

